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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,068	11/13/2003	David W. Ringel	6231-000004	7916

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EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,068

Applicant(s)

RINGEL, DAVID W.

Examiner

John Sipos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 29-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

RESTRICTION REQUIREMENT

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-28, drawn to a packaging working cell, classified in Class 53, subclass 390.

Group II. Claims 29-30, drawn to a method of packaging, classified in Class 53, subclass 467.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups I and II are related as **product and process of using the product**. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case, the apparatus set forth in the claims of Group I can be used in a process other than the one set forth in the claims of Group II. For example, not all the steps recited in the process need not take place in work cell or only some of the steps need be performed so that the loading or the labeling of the containers need not be performed.

Because these inventions are distinct for the reasons given above, and because they have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes, as indicated, is proper.

Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even if the restriction requirement is traversed.

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During a telephone conversation between Examiner John Sipos and Mr. B. Seitz, attorney of record in this case, on October 15, 2004, a provisional election was made with traverse to prosecute the invention of Group I, comprising claims 1-28. Affirmation of this election must be made by applicant in responding to this Office action. Claims 29-31 are withdrawn from further consideration by the examiner as being drawn to a non-elected invention. (See 37 CFR 1.142(b)). An action on the merits of the elected claims follows.

Applicant is reminded that, upon cancellation of claims to a non-elected invention, the **inventorship must be amended** in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h). Applicant should further **amend the title**, in necessary, to reflect the elected invention.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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Claims 1,3-5,15,17 and 19 are rejected under **35 U.S.C. ' 102(b)** as being clearly anticipated by the patent to Russell (4,333,300) or Muzinich (3,161,004) or Carlson (4,033,090) or Johnsonm (4,662,150). These references show packaging work cells which comprise an inbound portion (22a,34,14, and 34, respectively) that comprise a "cradle" or "platform" and an outbound portion (90,18,49 and 14, respectively) that comprise a "cradle". Note that in all these references the two portions are at "an angle" less than 180 degrees relative to each other in that the outbound portion in each case is positioned at zero or 90 degrees relative the inbound portion.

Regarding claim 15, since the manual operations performed at the inbound and outbound portions are not structural limitations but merely set forth a use for the platforms, they are given little patentable weight.

Claims 1-5,10,15-17 and 19 are rejected under **35 U.S.C. ' 102(b)** as being clearly anticipated by the patent to Harkness (3,830,036). The Harkness patent shows a packaging work cell which comprise an inbound portion (22) that comprise a "cradle" or "platform" and an outbound portion (30) that comprise a "cradle" oriented at approximately 135 degrees relative to the inbound portion (see Figure 1).

Regarding claim 15, since the manual operations performed at the inbound and outbound portions are not structural limitations but merely set forth a use for the platforms, they are given little patentable weight.

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,8,10,11,15,18,20 and 21 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Muzinich (3,161,004) or Carlson (4,033,090) or Johnson (4,662,150).

The use of cradles/platforms that are adjustable (claims 6), mounting devices for supporting materials (claim 100, label holders (claim 11) and compartments (claim 12) are well known in the art and would have been obvious to one of ordinary skill in the art to use them in the applied references for their inherent advantages.

Claims 2 and 16 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Muzinich (3,161,004) or Carlson (4,033,090) or Johnson (4,662,150), as applied above, and further in view of Harkness (3,830,036). The Harkness patent shows a packaging work cell which comprise an inbound portion (22) and an outbound portion (30) oriented at approximately 135 degrees relative to the inbound portion (see Figure 1) to aid the operator to easily reach different portions of the cell. It would have been obvious to one skilled in the art to position the container-closing outbound portion of the work cell at approximately 135 degrees as taught by Harkness to permit the operator to easily reach different parts of the cell.

Claims 7,9,13,14 and 22-28 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Muzinich (3,161,004) or Carlson (4,033,090) or Johnson (4,662,150) as applied to the claims above, and further in view of the patent to Paxton (3,126,685). The basic

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references lack the use of fastener mechanisms. The patent to Paxton shows a carton stapling machine that comprises an upper stapling device 83, a lower stapling device 82 and two alignment mechanisms 80 and 81. It would have been obvious to one skilled in the art to provide the carton closing devices of Muzinich, Carlosn or Johnson with a stapling machine as shown by Paxton to positively seal the containers.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The patents to Berney and Geyer show stapling devices with alignment means.

The patents to Harrison, Mitten and Leslie show mounting devices for supporting materials, roll holders and compartments in packaging stands.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

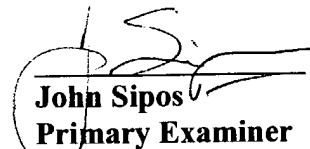
The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.

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John Sipos
Primary Examiner
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